



August 13, 2021

**VIA ECFS**

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
45 L Street, NE  
Washington, DC 20554

Re: *Rural Digital Opportunity Fund, WC Docket No. 19-126, Connect America Fund,  
WC Docket No. 10-90, Auction 904, AU Docket No. 20-34*

Dear Ms. Dortch:

USTelecom – The Broadband Association (USTelecom) and NTCA – The Rural Broadband Association (NTCA) (jointly, “the Associations”) write in regards to the 197 letters sent to various Rural Digital Opportunity Fund (RDOF) auction winners concerning the eligibility of certain census blocks won by such auction winners.<sup>1</sup> The letters appear to offer winning bidders an opportunity to no longer pursue support associated with certain census blocks without being subject to potential default penalties. The Associations appreciate and support the Commission’s objective to target support to unserved locations or address other questions related to the nature of certain areas included within the initial auction, and we continue to support thorough review by the Commission of each and every applicant to confirm that funding authorization is indeed warranted.

However, we write to highlight our understanding of the RDOF Order’s requirements (or lack thereof) concerning the issue identified in the letters and to identify provisions in the Commission’s rules that are already in place to address the alleged concerns. Some providers may avail themselves of the waiver opportunity outlined in the letters. To the extent that providers do not elect to seek a waiver at this time, the Commission’s existing rules can sufficiently address any deficiencies caused by subsequent improvements to currently imprecise broadband availability data.

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<sup>1</sup> See <https://www.fcc.gov/auction/904/releases>.

First, the RDOF Order had a very deliberate and well-articulated process whereby the Commission determined which census blocks would be eligible in the auction.<sup>2</sup> The RDOF Order recognized that there are limitations in the existing Form 477 data, and therefore limited Phase I of the RDOF to those census blocks identified as wholly unserved.<sup>3</sup> The Commission directed the Wireline Competition Bureau (Bureau) to compile a preliminary list of eligible areas for Phase I of the auction and to subsequently conduct a limited challenge process whereby parties would have the opportunity to challenge the eligibility of the initial list of eligible census blocks.<sup>4</sup> The Bureau implemented these requirements and published a final list of eligible census blocks prior to the start of the auction.<sup>5</sup> In effect, recognizing the limitations in broadband availability data, the Bureau ran a pre-auction due diligence process to identify eligible locations on behalf of potential auction participants. The RDOF Order gave no indication that bidders might be unable to rely on the eligibility of census blocks as identified by the Bureau in defining their project areas and submitting their bids.<sup>6</sup>

Second, because the auction was based on imprecise location data, the Commission established a very clear post-auction process to address the fact that the number of actual locations that providers must ultimately serve will differ from the number identified by the Commission before the auction. In the RDOF Order the Commission acknowledged that location counts in the Connect America Cost Model (CAM) are based on 2011 Census data and “that there may be some disparity between the number of locations identified before the auction occurs and the ‘facts on the ground.’”<sup>7</sup> The Commission also acknowledged at the outset that, “Phase I bidders will be competing for support amounts to offer service to all locations ultimately identified in an area, not just to the specific number of locations in that area identified prior to the auction, without adjusting awarded support amounts.”<sup>8</sup> The Commission thus understood that the location data used in the auction was imprecise and would need to be superseded by the actual location data identified by the Commission based on its improved data collection.

To address this the Commission adopted a post-auction true-up process, explicitly described in the RDOF Order and its accompanying rules precisely to account for the disconnect between model locations and actual RDOF service locations.<sup>9</sup> That process in which the Commission will identify the actual number of unserved locations in eligible areas as determined via the Commission’s pending Broadband Data Collection, should sufficiently address concerns that the number of actual unserved locations in areas won may not match the number bid on in

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<sup>2</sup> *In the Matter of the Rural Digital Opportunity Fund*, Report and Order, 35 FCC Rcd 686, 690-694, paras. 9-16 (Jan. 30, 2020) (*RDOF Order*).

<sup>3</sup> *Id.* at para. 11 (noting that the “primary shortcomings of FCC Form 477 data do not come into play under the two-phased framework we adopt here.”).

<sup>4</sup> *Id.* at paras. 12-14.

<sup>5</sup> *Wireline Competition Bureau and Office of Economics and Analysis Release Updated List and Map of Eligible Areas for the Rural Digital Opportunity Fund Phase I Auction*, Public Notice, 35 FCC Rcd 6499 (Jun. 25, 2020).

<sup>6</sup> While the letters properly indicate that it is the responsibility of winning bidders to comply with RDOF public interest obligations, such requirements *only* relate to the performance of the funded networks in the areas eligible for RDOF support. There is no public interest obligation relevant to the issues raised in the letters.

<sup>7</sup> *In the Matter of the Rural Digital Opportunity Fund*, Report and Order, 35 FCC Rcd 686, 711, para. 47 (Jan. 30, 2020) (*RDOF Order*).

<sup>8</sup> *RDOF Order* at 689, para. 6.

<sup>9</sup> *RDOF Order* at 709-711, *also see* 47 C.F.R. § 54.802.

the auction. Winning bidders must demonstrate many things in their long-form applications before being deemed eligible to receive funding, but also requiring winning bidders to conduct their own broadband availability investigation prior to the Commission completing its own mapping work was not contemplated in the RDOF Order.

The Commission has not only already established a process to correct for currently imperfect maps, but it has also directed that true-up process to occur at a time when both the Commission and auction winners will have the benefit of much more granular and accurate data to effectuate that process. In addition to any potential waivers that providers may now seek, the existing rules can sufficiently address the issues identified in the letters.

Sincerely,



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